

IN THE SECOND DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

FILED
SECOND JUDICIAL DISTRICT
2008 NOV 10 PM 4:24

KENDRA GOERS

WILLIAM R. STEPHENS, PAUL CARTER JR,
CHRISTOPHER STANLEY, DANIEL REYNOLDS
IAN VANDERMEY, PATRICK KELLY, ROBERT
RIVERA, PAUL CARTER III, AND ALL OTHER
UNKNOWN PLAINTIFFS,

Juanita M. Duran

SUMMONS ISSUED

Plaintiffs,

vs.

No.

CV 2008 1170 8

LEGIT SECURITY INC., ATLAS RESOURCES INC.,
GILBERT BACA, JOE STIDHAM, JIMMY DASKALOS,
SKILLSTORM SECURITY SERVICES INC.,
LEGIT ENTERPRISES, LLC, MARK PADILLA, POLLY PADILLA,

Defendants.

COMPLAINT FOR DAMAGES

Plaintiffs, William R. Stephens, Paul Carter, Jr., Christopher Stanley, Daniel Reynolds, Ian Vandermey, Patrick Kelly, Robert Rivera, Paul Carter, III, and all other unknown Plaintiffs at this time, by and through their attorneys, Melendres & Melendres, LLC, for their Complaint, allege as follows:

NATURE OF THE ACTION

1. This is an action against Defendants for their fraud, breach of contract, misrepresentations, and for their complicity in the fraud and misrepresentations, in connection with the failure to pay Plaintiffs the wages, overtime, back pay, vacation pay and reimbursements they were owed for the work they completed on behalf of Defendants. By reason of Defendants' illegal and wrongful conduct, Plaintiffs have been damaged in an amount in excess of \$1,000,000.

THE PARTIES

2. Plaintiffs, William R. Stephens, Paul Carter, Jr., Christopher Stanley, Daniel Reynolds, Ian Vandermeij, and Robert Rivera, are all residents of the County of Bernalillo, City of Albuquerque, State of New Mexico.

3. Plaintiffs, Patrick Kelly and Paul Carter, III, are all residents of the County of Sandoval, City of Rio Rancho, State of New Mexico.

4. Upon information and belief, Legit Enterprises LLC, is a New Mexico Limited Liability Company doing business in Bernalillo County, New Mexico.

5. Upon information and belief, Mark Padilla is a resident of Bernalillo County, New Mexico.

6. Upon information and belief, Polly Padilla is a resident of Bernalillo County, New Mexico.

7. Upon information and belief, Atlas Resources, Inc., is a New Mexico Corporation operating in Bernalillo County, New Mexico.

8. Upon information and belief, Jimmy Daskalos is a resident of Bernalillo County, New Mexico.

9. Upon information and belief, Legit Security Inc., is a corporation doing business in Bernalillo County, New Mexico.

10. Upon information and belief, Skillstorm Security Services, Inc., is a corporation doing business in Bernalillo County, New Mexico.

11. Upon information and belief, Gilbert Baca is a resident of Bernalillo County, New Mexico.

12. Upon information and belief, Joe Stidham is a resident of Bernalillo County, New Mexico.

JURISDICTION

13. Defendants contracted for goods and services in New Mexico, County of Bernalillo with Plaintiffs and breached that contract. Defendants also committed their fraud and other torts in New Mexico, County of Bernalillo.

14. This Court has jurisdiction pursuant to 38-1-16 NMSA.

FACTS COMMON TO ALL CAUSES OF ACTION

15. All of the Plaintiffs worked for Legit Security Inc., Atlas Resources Inc., Gilbert Baca, Joe Stidham, Jimmy Daskalos, Skillstorm Security Services Inc., Legit Enterprises, LLC., Mark Padilla and Polly Padilla (collectively "the Company" or "Defendants") in various capacities doing security work. Each of the Plaintiffs received the Company's Personnel Policy Handbook, which set forth their pay and benefits. Employees were to be paid weekly

16. During 2007 and 2008, the Company paid Plaintiffs and other employees of the Company late or not at all, or the Company gave checks that were not in the full amount. Many employees expressed their concern to Defendants about the fact that they were not being paid and the hardships that the lack of pay was causing in their lives. Defendants, in their individual capacities, however, assured all employees, including Plaintiffs, that they would be paid in full and made personal guarantees about payment.

17. When Plaintiffs contacted Defendants about their lack of pay, Plaintiffs were expressly promised by Defendants that they, in their individual capacities, guaranteed that Plaintiffs would be paid.

18. Plaintiffs made a demand on Defendants for payment and to this date Plaintiffs still have not been paid their back wages and have not been reimbursed for their expenses.

FIRST CAUSE OF ACTION
(Breach of Contract)

19. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

20. It is undisputed that Defendants failed to pay Plaintiffs for their wages and vacation time and reimburse them for expenses and thereby breached their contract with Plaintiffs.

21. In addition, because of Defendants' breach of contract, Plaintiffs have suffered damages as a direct result of not being paid, in part because the resulting lack of payment caused them to be unable to meet other financial obligations.

22. Defendants, in their individual capacities, also made personal guarantees, promises and assurances that Plaintiffs would be paid. Defendants, in their individual capacities, have breached the contracts they made with Plaintiffs.

23. As a direct and proximate result of Defendants' breach of contract, each Plaintiff has suffered damages in an amount to be determined according to proof at trial.

SECOND CAUSE OF ACTION
(Fraud and Deceit by Active Concealment)

24. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

25. Defendants actively concealed the true facts concerning the financial matters of the Company and misrepresented to Plaintiffs that they would be paid for their work.

26. Defendants knew or should have known that the true facts concerning the matters misrepresented were unknown to Plaintiffs.

27. Defendants actively concealed the true facts concerning the matters misrepresented with the intent to defraud and the intent to induce reliance thereon by Plaintiffs.

28. Plaintiffs reasonably relied on the false statements and misrepresentations made by Defendants and other statements as set forth above.

29. As a direct and proximate result of Defendants' active concealment of material facts, Plaintiffs have suffered damages in an amount to be determined according to proof at trial, but in any event in excess of \$500,000.

30. Defendants acted maliciously when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive damages.

THIRD CAUSE OF ACTION
(Fraud and Deceit by Misrepresentation of Material Facts)

31. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

32. Defendants misrepresented the true facts concerning the financial matters of the Company and other statements as set forth above.

33. Defendants misrepresented the true facts concerning the matters misrepresented with the intent to defraud and the intent to induce reliance thereon by Plaintiffs.

34. Plaintiffs reasonably relied on the false statements and misrepresentations made by Defendants and other statements as set forth above.

35. Had the material facts concerning the matters misrepresented by Defendants been known to Plaintiffs, Plaintiffs would not have continued to work for the Company.

36. In addition, Defendants, in their individual capacities, profited from their fraud. Defendants knew money was not available to pay Plaintiffs, but nevertheless made fraudulent statements to induce them to continue working without pay. Defendants, in their

individual capacities, reaped the benefits of Plaintiffs' work, knowing that Plaintiffs never would be paid.

37. As a direct and proximate result of Defendants' misrepresentation of material facts, Plaintiffs have suffered damages in an amount to be determined according to proof at trial, but in any event in excess of \$500,000.

38. Defendants acted maliciously when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive damages.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

39. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

40. Defendants misrepresented the true facts concerning the financial matters of the Company and other statements as set forth above.

41. Defendants made these misrepresentations of facts to Plaintiffs without any reasonable grounds for believing the representations were true when made.

42. Plaintiffs reasonably relied on Defendants' misrepresentation of facts. Defendants' misrepresentation and concealment of material facts were the immediate cause of Plaintiffs' injuries. Had Defendants' misrepresentation and concealment of facts not been made to Plaintiffs, Plaintiffs would not have continued to work for the Company.

43. As a direct and proximate result of Defendants' negligent misrepresentations, Plaintiffs have suffered damages in an amount to be determined according to proof at trial, but in any event in excess of \$500,000.

44. Defendants acted maliciously when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive damages.

FIFTH CAUSE OF ACTION
(Negligence)

45. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

46. Defendants owed Plaintiffs a duty of care.

47. Defendants breached their duty of care to Plaintiffs by misrepresenting the true facts concerning the financial matters of the Company and other statements as set forth above. Plaintiffs reasonably relied on Defendants' misrepresentations of material facts. Defendants' misrepresentations of material facts were the immediate cause of Plaintiffs' injuries.

48. Had Defendants not violated their duty of care to Plaintiffs, Plaintiffs would not have been damaged.

49. As a direct and proximate result of Defendants' negligence and breach of their duty of care, Plaintiffs have suffered damages in an amount to be determined according to proof at trial, but in any event in excess of \$500,000.

SIXTH CAUSE OF ACTION
(Violation of 50-4-4 NMSA)

50. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

51. New Mexico Statute 50-4-4 provides "In case of failure to pay wages or compensation due an employee within the time hereinbefore fixed, the wages and compensation of the employee shall continue from the date of discharge until paid at the same rate the employee received at the time of discharge, and may be recovered in a civil action brought by the employee; provided that the employee shall not be entitled to recover any wages or

compensation for any period subsequent to the date of discharge unless he pleads in his complaint and establishes that he made demand within a reasonable time upon his employer at the place designated for payment and payment was refused, provided further that the employee shall not be entitled to recover any wages or compensation for any period subsequent to the sixtieth day after the date of discharge.”

52. Here, Plaintiffs made a demand for payment and still have not received payment from Defendants.

53. As a direct and proximate result of Defendants’ violation of 50-4-4 NMSA, each Plaintiff is entitled to receive 60 additional days of pay plus vacation time.

SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

54. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

55. Defendants used unlawful means to achieve the goal of defrauding Plaintiffs. Defendants misrepresented the status of the Company for the unlawful purpose of having Plaintiffs work so that they could reap a monetary gain.

56. All of the Defendants acted together in setting forth the plan to defraud Plaintiffs.

57. As a direct and proximate result of Defendants’ conspiracy, Plaintiffs have suffered damages in an amount to be determined according to proof at trial, but in any event in excess of \$500,000.

58. Defendants acted maliciously when they committed the wrongful acts which constitute this cause of action such that it warrants the imposition of punitive damages.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

59. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

60. Here, it is undisputed that Defendants failed to pay Plaintiffs for their wages and vacation time and reimburse them for expenses and thereby breached their contract with Plaintiffs.

61. Plaintiffs performed a service for Defendants. Defendants were paid by third parties for those services but never paid Plaintiffs. Plaintiffs conferred a benefit upon Defendants.

62. Defendants' retention of those benefits is unjust.

63. In addition, because of Defendants' unjust retention of benefits conferred by Plaintiffs, Plaintiffs have suffered damages as a direct result of not being paid, in part because the resulting lack of payment caused them to be unable to meet other financial obligations.

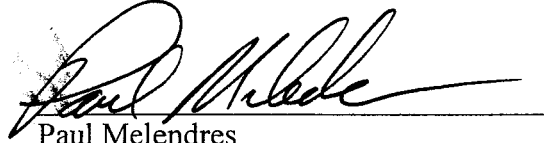
64. As a direct and proximate result of Defendants' unjust enrichment, each Plaintiff has suffered damages in an amount to be determined according to proof at trial.

WHEREFORE, Plaintiffs request judgment against Defendants, jointly and severally, for:

- (a) damages in an amount to be determined at trial but no less than \$500,000;
- (b) interest thereon;
- (c) punitive damages to be determined at trial but no less than \$1,000,000;
- (d) the costs and expenses of this action, including attorneys' fees; and
- (e) such other and further relief as the Court deems just.

Dated: November 10, 2008

MELENDRES & MELENDRES, LLC

A handwritten signature in black ink, appearing to read "Paul Melendres", is written over a horizontal line.

Paul Melendres
Attorney for Plaintiffs
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